



भारत का राजपत्र The Gazette of India



असाधारण
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 33] नई दिल्ली, शुक्रवार, जुलाई 28, 1978/श्रावण 6, 1900

No. 33] NEW DELHI, FRIDAY, JULY 28, 1978/SRAVANA 6, 1900

इस भाग में भिन्न पृष्ठ संख्या दी जाती हैं जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 28th July, 1978:--

BILL No. 113 OF 1978

A Bill to provide for the acquisition and transfer of the right, title and interest of the undertakings of Britannia Engineering Company in relation to the Mokameh unit owned by it and the right, title and interest of Arthur Butler and Company in relation to the undertakings owned by it, with a view to ensuring the continued manufacture of railway wagons and other goods essential to the needs of the country in general and the Railways in particular, and for matters connected therewith or incidental thereto.

WHEREAS Britannia Engineering Company at the Mokameh unit and Arthur Butler and Company were engaged in the manufacture of railway wagons and other goods;

AND WHEREAS as a result of the closure of the wagon and other undertakings owned by the companies aforesaid, there was a substantial fall in the manufacture of railway wagons and other goods;

AND WHEREAS for the purpose of bringing the closed works of the companies aforesaid into operation the management of the Mokameh unit of Britannia Engineering Company and the management of the undertakings of Arthur Butler and Company were taken over by the Central Government under the Industries (Development and Regulation) Act, 1951;

65 of 1951.

AND WHEREAS it is necessary to acquire the said wagon and other undertakings to ensure the continued manufacture of railway wagons and

other goods which are essential to the needs of the country in general, and the Railways in particular;

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title
and com-
mencement

1. (1) This Act may be called the Britannia Engineering Company Limited (Mokameh Unit) and the Arthur Butler and Company (Muzaffarpore) Limited (Acquisition and Transfer of Undertakings) Act, 1978.

(2) The provisions of sections 27 and 28 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of April, 1978.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appointed day” means the 1st day of April, 1978;

(b) “Arthur Butler and Company” means Messrs. Arthur Butler and Company (Muzaffarpore) Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at 40, Strand Road, Calcutta, in the State of West Bengal;

1 of 1956.

(c) “Britannia Engineering Company” means Messrs. Britannia Engineering Company Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at 3, Netaji Subhash Road, Calcutta, in the State of West Bengal;

1 of 1956.

(d) “Commissioner” means the Commissioner of Payments appointed under section 15;

(e) “Government company” means a company within the meaning of section 617 of the Companies Act, 1956 and referred to in section 5 of this Act;

1 of 1956.

(f) “Mokameh unit” means the wagon and other undertakings owned by Britannia Engineering Company at Mokameh, in the State of Bihar;

(g) “notification” means a notification published in the Official Gazette;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “specified date”, in relation to any provision of this Act, means such date as the Central Government may, by notification, specify for the purpose of that provision and different dates may be specified for different provisions of this Act;

(j) “wagon and other undertaking” means the undertaking which is engaged in the manufacture of railway wagons and other goods;

(k) words and expressions used herein and not defined but defined in the Companies Act, 1956, have the meanings, respectively, assigned to them in that Act.

1 of 1956.

CHAPTER II

ACQUISITION AND TRANSFER OF MOKAMEH UNIT AND UNDERTAKINGS OF
ARTHUR BUTLER AND COMPANY

3. On the appointed day,—

(i) the Mokameh unit and the right, title and interest of Britannia Engineering Company in relation to the Mokameh unit; and

(ii) the undertakings owned by Arthur Butler and Company and the right, title and interest of Arthur Butler and Company in relation to the said undertakings,

shall, by virtue of this Act, stand transferred to, and shall vest in, the Central Government.

Vesting in the Central Government of Mokameh unit and undertakings of Arthur Butler and Company.

4. (1) The Mokameh unit, and the undertakings of Arthur Butler and Company, referred to in section 3, shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash in hand, reserve funds, investments and book debts pertaining to the Mokameh unit or, as the case may be, the undertakings of Arthur Butler and Company, and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control—

General effect of vesting.

(a) of Britannia Engineering Company, in relation to the Mokameh unit, or

(b) of Arthur Butler and Company, in relation to the undertakings owned by it,

whether within or outside India, and all books of account, registers and other documents of whatever nature relating thereto.

(2) All properties as aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court or other authority, restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall be deemed to have been withdrawn.

(3) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part out of the amounts specified in the First Schedule and also out of

the monies determined under section 3, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government or the Government company, as the case may be.

(5) If, on the appointed day, any suit, appeal or other proceeding of whatever nature instituted or preferred by or against Britannia Engineering Company in relation to the Mokameh unit, or by or against Arthur Butler and Company in relation to any undertaking owned by it, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the Mokameh unit or, as the case may be, the undertakings of Arthur Butler and Company, or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Central Government or the Government company, as the case may be.

Power of
Central
Govern-
ment to
direct
vesting of
Mokameh
unit and
the under-
takings of
Arthur
Butler and
Company
in a Gov-
ernment
company.

5. (1) Notwithstanding anything contained in section 3, the Central Government may, if it is satisfied that a Government company (whether in existence at the commencement of this Act or incorporated thereafter) is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the Mokameh unit and the undertakings referred to in section 3, and the right, title and interest of Britannia Engineering Company in relation to the Mokameh unit, and the right, title and interest of Arthur Butler and Company in relation to the undertakings owned by it, which have vested in the Central Government under section 3, shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest in relation to the Mokameh unit and in relation to the other undertakings referred to in section 3, vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner of the Mokameh unit and of the undertakings of Arthur Butler and Company and all the rights and liabilities of the Central Government in relation to the Mokameh unit and the undertakings of Arthur Butler and Company shall, on and from the date of such vesting, be deemed to have been the rights and liabilities, respectively, of the Government company.

Britannia
Engineer-
ing Com-
pany
and
Arthur
Butler
and com-
pany to
be liable
for
certain
prior
liabilities.

6. (1) Every liability of Britannia Engineering Company in relation to the Mokameh unit, or of Arthur Butler and Company in relation to the undertakings owned by it, in respect of any period prior to the appointed day, shall be the liability of Britannia Engineering Company, or Arthur Butler and Company, as the case may be, and shall be enforceable against such company and not against the Central Government or the Government company.

(2) For the removal of doubts, it is hereby declared that,—

(a) save as otherwise expressly provided in this section or in any other section of this Act,—

(i) no liability of Britannia Engineering Company, in relation to the Mokameh unit, and

(ii) no liability of Arthur Butler and Company, in relation to the undertakings owned by it,

in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the Government company, as the case may be;

(b) no award, decree or order of any court, tribunal or other authority in relation to the Mokameh unit, or in relation to the undertakings owned by Arthur Butler and Company, passed after the appointed day in respect of any matter, claim or dispute, which arose before that day, shall be enforceable against the Central Government or the Government company, as the case may be;

(c) no liability incurred before the appointed day by—

(i) Britannia Engineering Company, in relation to the Mokameh unit, or

(ii) Arthur Butler and Company, in relation to the undertakings owned by it,

for the contravention of any provision of law for the time being in force shall be enforceable against the Central Government or the Government company, as the case may be.

CHAPTER III

PAYMENT OF AMOUNT

7. (1) For the transfer to, and vesting in, the Central Government, under section 3,—

Payment
of amount.

(a) of the Mokameh unit and the right, title and interest of Britannia Engineering Company, in relation to that unit; and

(b) of the undertakings owned by Arthur Butler and Company, and the right, title and interest of Arthur Butler and Company, in relation to those undertakings,

there shall be given by the Central Government to Britannia Engineering Company and Arthur Butler and Company, in cash and in the manner specified in Chapter VI, an amount equal to the amount specified, respectively, in the First Schedule, against Britannia Engineering Company and Arthur Butler and Company.

(2) For the removal of doubts, it is hereby declared that the liabilities of—

(i) Britannia Engineering Company, in relation to the Mokameh unit, and

(ii) Arthur Butler and Company, in relation to the undertakings owned by it,

shall be met, in accordance with the rights and interests of the creditors of the respective company from the amount due, respectively, to Britannia Engineering Company and Arthur Butler and Company, under sub-section (1).

Payment
of further
amount.

8. (1) For the deprivation of Britannia Engineering Company of the management of the Mokameh unit and for the deprivation of Arthur Butler and Company of the management of the undertakings owned by it, there shall be given, in cash, by the Central Government to the respective company, in addition to the amount specified in section 7, an amount computed at the rate of ten thousand rupees per annum for the period commencing on the date on which the management of such unit or, as the case may be, such undertakings, was taken over by the Central Government under the Industries (Development and Regulation) Act, 1951 and ending with the appointed day.

65 of 1951.

(2) In consideration of the retrospective operation of the provisions of sections 3, 4 and 6, there shall also be given, in cash, by the Central Government to Britannia Engineering Company and to Arthur Butler and Company an amount equal to an amount calculated at the rate of ten thousand rupees per annum for the period commencing on the appointed day and ending with the date on which this Act receives the assent of the President.

(3) The amount specified in section 7 and the amount computed under sub-sections (1) and (2) shall carry simple interest at the rate of four per cent. per annum for the period commencing on the appointed day and ending with the date on which the payment of amount is made by the Central Government to the Commission.

(4) The amounts determined in accordance with the provisions of sub-sections (1), (2) and (3) shall be given to Britannia Engineering Company and to Arthur Butler and Company in addition to the amount specified in the First Schedule.

CHAPTER IV

MANAGEMENT, ETC., OF MOKAMEH UNIT AND THE UNDERTAKINGS OF ARTHUR BUTLER AND COMPANY

Manage-
ment, etc.,
of Moka-
meh unit
and the
under-
takings
of Arthur
Butler
and
Company.

9. On the appointed day, the general superintendence, direction, control and management of the affairs and business of the Mokameh unit and of the undertakings owned by Arthur Butler and Company shall—

(a) where a direction has been made by the Central Government under section 5, vest in the Government company specified in such direction, or

(b) where no such direction has been made, vest in such person or body of persons as may be appointed by the Central Government in this behalf,

and thereupon the Government company so specified or the person or body of persons so appointed, as the case may be, shall be entitled to exercise all such powers and do all such things as Britannia Engineering Company is authorised to exercise and do in relation to its Mokameh unit or, as the case may be, Arthur Butler and Company is authorised to exercise and do in relation to the undertakings owned by it.

10. (1) Every person, in whose possession or custody or control—**(i) the Mokameh unit, or****(ii) any undertaking of Arthur Butler and Company, or**

any part of such unit or undertaking or any machinery, instrument or other movable assets forming part of such unit or undertaking, may be immediately before the appointed day, shall forthwith deliver possession of the Mokameh unit or such undertaking or such part, machinery, instrument or other asset, as the case may be, to the Central Government or the Government company or to such person or body of persons as the Central Government or the Government company may specify in this behalf.

Duty to deliver possession of Mokameh unit and undertakings of Arthur Butler and Company.

(2) Every person who has, on the appointed day, in his possession or under his control any assets, books, documents or other papers relating to the Mokameh unit or any undertaking owned by Arthur Butler and Company, which has vested in the Central Government or a Government company under this Act, and which belong to Britannia Engineering Company or, as the case may be, Arthur Butler and Company, or would have so belonged if the Mokameh unit, or, as the case may be, the undertakings owned by Arthur Butler and Company, had not vested in the Central Government or the Government company, shall be liable to account for the said assets, books, documents and other papers to the Central Government or the Government company and shall deliver them up to the Central Government or the Government company or to such person or body of persons as the Central Government or the Government company may specify in this behalf.

(3) The Central Government may take or cause to be taken all necessary steps for securing possession of the Mokameh unit and the undertakings of Arthur Butler and Company which have vested in it under section 3.

11. Britannia Engineering Company and Arthur Butler and Company shall, within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all its properties and assets, as on the appointed day, pertaining to the Mokameh unit or, as the case may be, the undertakings owned by Arthur Butler and Company which has or have vested in the Central Government under section 3, and, for this purpose the Central Government or the Government company shall afford Britannia Engineering Company or Arthur Butler and Company all reasonable facilities.

Duty of the companies to furnish particulars.

12. On the vesting in the Central Government or the Government company of the management of the Mokameh unit or of any undertakings owned by Arthur Butler and Company, all persons in charge of the management of the Mokameh unit or, as the case may be, the undertakings owned by Arthur Butler and Company immediately before the date of such vesting, shall be bound to deliver to the Central Government or the Government company or to such person or body of persons as the Central Government or the Government company may specify in this behalf, all assets, books of account, registers or other documents in their custody relating to the Mokameh unit or, as the case may be, any undertaking owned by Arthur Butler and Company.

Duty of persons in charge of management of Mokameh unit or undertakings of Arthur Butler and Company to deliver assets, etc.

CHAPTER V

PROVISIONS RELATING TO EMPLOYEES OF MOKAMEH UNIT AND OF ARTHUR BUTLER AND COMPANY

Employment of employees to continue.

13. (1) Every person who has been, immediately before the appointed day, employed by—

(i) Britannia Engineering Company, in connection with the Mokameh unit, or

(ii) Arthur Butler and Company, in connection with any undertaking owned by it,

shall become, on and from the appointed day, an employee of the Central Government or, as the case may be, of the Government company, and shall hold office or service under the Central Government or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Government company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed in the Mokameh unit or any undertakings owned by Arthur Butler and Company, to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

14 of 1947.

Provident fund and other funds.

14. (1) Where Britannia Engineering Company or Arthur Butler and Company has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of persons employed in the Mokameh unit or, as the case may be, any of the undertakings owned by Arthur Butler and Company, the monies relatable to the employees, whose services have become transferred by or under this Act to the Central Government or the Government company shall, out of the monies standing, on the appointed day, to the credit of such provident fund, superannuation fund, welfare fund or other funds, stand transferred to, and vest in, the Central Government or the Government company, as the case may be.

(2) The monies which stand transferred under sub-section (1) to the Central Government or the Government company, as the case may be, shall be dealt with by that Government or the Government company in such manner as may be prescribed.

CHAPTER VI

COMMISSIONER OF PAYMENTS

Appointment of Commissioner of Payments.

15. (1) The Central Government shall, for the purpose of disbursing the amount payable under sections 7 and 8 to Britannia Engineering Company and to Arthur Butler and Company, by notification, appoint a Commissioner of Payments.

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

16. (1) The Central Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to Britannia Engineering Company and to Arthur Butler and Company,—

Payment by Central Government to the Commissioner.

(a) an amount equal to that specified against each of their names in the First Schedule,

(b) an amount equal to that payable to Britannia Engineering Company and Arthur Butler and Company under section 8.

(2) A deposit account shall be opened by the Central Government in favour of the Commissioner in the Public Account of India, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account and the said deposit account shall be operated by the Commissioner.

(3) Separate records shall be maintained by the Commissioner in respect of Mokameh unit and the undertakings owned by Arthur Butler and Company in relation to which payment has been made to him under this Act.

(4) Interest accruing on the amounts standing to the credit of the deposit account referred to in sub-section (2) shall enure to the benefit of Britannia Engineering Company and Arthur Butler and Company.

17. (1) The Central Government or the Government company, as the case may be, shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money due to Britannia Engineering Company in relation to the Mokameh unit, or Arthur Butler and Company in relation to any of the undertakings owned by it, which has vested in the Central Government or the Government company, and realised after the appointed day, notwithstanding that the realisation pertains to a period prior to the appointed day.

Certain powers of the Central Government or Government company.

(2) The Central Government or the Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by that Government after the appointed day for discharging any liability of Britannia Engineering Company in relation to the Mokameh unit, or of Arthur Butler and Company in relation to any of the undertakings owned by it, in relation to any period prior to the appointed day, and every such claim shall have priority, in accordance with the priorities attaching under this Act, to the matter in relation to which such

liability has been discharged by the Central Government or the Government company.

(3) Save as otherwise provided in this Act, the liabilities of Britannia Engineering Company in relation to the Mokameh unit, or of Arthur Butler and Company in relation to any of the undertakings owned by it, in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of Britannia Engineering Company or Arthur Butler and Company, as the case may be.

Claims to be made to the Commissioner.

18. Every person having a claim against Britannia Engineering Company in relation to the Mokameh unit, or against Arthur Butler and Company in relation to the undertakings owned by it, shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days, but not thereafter.

Priority of claims.

19. The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles, namely:—

(a) category I shall have precedence over all categories and category II shall have precedence over category III and so on;

(b) the claims specified in each of the categories, except category IV, shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportion and be paid accordingly;

(c) the liabilities specified in category IV shall be discharged subject to the priorities specified in this section in accordance with the terms of the secured loan and the priority, *inter se*, of such loans; and

(d) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

Examination of claims.

20. (1) On receipt of the claims made under section 18, the Commissioner shall arrange the claims in the order of priorities specified in the Second Schedule and examine the same in accordance with such order of priorities.

(2) If on an examination of the claim, the Commissioner is of opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the claim in respect of such lower category.

Admission or rejection of claims.

21. (1) After examining the claims with reference to the priorities set out in the Second Schedule, the Commissioner shall fix a date on or before which every claimant shall file the proof of his claim failing which he will be excluded from the benefit of the disbursement made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in the English language having circulation in the major part of the country and one issue of such daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the period specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the period specified by the Commissioner shall be excluded from the disbursement made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving Britannia Engineering Company or, as the case may be, Arthur Butler and Company, an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he may hold his sitting and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the issuing of any commission for the examination of witnesses.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal court of original jurisdiction within the local limits of whose jurisdiction the Mokameh unit or, as the case may be, the registered office of Arthur Butler and Company is situated:

Provided that where a person, who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court of the State in which the registered office of Britannia Engineering Company or, as the case may be, Arthur Butler and Company is situated, and such appeal shall be heard and disposed of by not less than two Judges of the High Court.

22. After admitting the claim under this Act, the amount due in respect of such claim shall be paid by the Commissioner to the person or persons to whom such sums are due and on such payment the liability of Britannia Engineering Company in relation to the Mokameh unit, or of Arthur Butler and Company in respect of any claim relating to the undertakings owned by it shall stand discharged.

Disbursement of money by Commissioner.

Disbursement of amounts to Britannia Engineering Company and Arthur Butler and Company.

23. (1) If out of the monies paid to him in relation to the Mokameh unit or in relation to any undertaking owned by Arthur Butler and Company there is a balance left after meeting the liabilities as specified in the Second Schedule, the Commissioner shall disburse such balance to Britannia Engineering Company, or as the case may be, to Arthur Butler and Company.

(2) Where the possession of any machinery, equipment or other property has vested in the Central Government or the Government company under this Act, but such machinery, equipment or other property does not belong to Britannia Engineering Company or, as the case may be, Arthur Butler and Company, it shall be lawful for the Central Government to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by Britannia Engineering Company or, as the case may be, Arthur Butler and Company, immediately before the appointed day.

Undisbursed or unclaimed amount to be deposited with the General Revenue Account.

24. Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last date on which the disbursement was made, shall be transferred by the Commissioner to the General Revenue Account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of the revenue.

CHAPTER VII

MISCELLANEOUS

Act to have overriding effect.

25. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

Contracts to cease to have effect unless ratified by the Central Government or the Government company.

26. (1) Every contract entered into by Britannia Engineering Company in relation to the Mokameh unit, or Arthur Butler and Company in relation to any of the undertakings owned by it, which has vested in the Central Government under section 3, for any service, sale or supply and in force immediately before the appointed day, shall, on and from the expiry of one hundred and eighty days from the date on which this Act receives the assent of the President, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the Central Government, or the Government company, and in ratifying such contract, the Central Government or the Government company may make such alteration or modification therein as it may think fit:

Provided that the Central Government or the Government company shall not omit to ratify a contract and shall not make any alteration or modification in a contract unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of, the Central Government or the Government company.

(2) The Central Government or the Government company shall not omit to ratify a contract, and shall not make any alteration or modification therein, except after giving the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.

27. Any person who,—

Penalties.

(a) having in his possession, custody or control any property forming part of the Mokameh unit, or any of the undertakings owned by Arthur Butler and Company, wrongfully withholds such property from the Central Government or the Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of, the Mokameh unit, or any of the undertakings owned by Arthur Butler and Company; or

(c) wilfully withholds or fails to furnish to the Central Government or the Government company or any person or body of persons specified by that Government or the Government company as the case may be any document relating to the Mokameh unit, or any of the undertakings owned by Arthur Butler and Company, which may be in his possession, custody or control; or

(d) fails to deliver to the Central Government or the Government company or any person or body of persons specified by that Government or the Government company, any assets, books of account, registers or other documents in his possession, custody or control relating to the Mokameh unit, or any of the undertakings owned by Arthur Butler and Company; or

(e) wrongfully removes or destroys any property forming part of the Mokameh unit, or any of the undertakings, owned by Arthur Butler and Company or prefers any claim under this Act which he knows or has reason to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

28. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Offences
by com-
panies.**

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Protection of action taken in good faith.

29. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of that Government or the Government company or other person authorised by that Government or the Government company for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or any of its officers or other employees or the Government company or any officer or other person authorised by that company for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Delegation of powers.

30. (1) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the powers conferred by sections 31 and 32, may also be exercised by such person or persons as may be specified in the notification.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

Power to make rules.

31. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the time within which, and the manner in which, an intimation referred to in sub-section (3) of section 4 shall be given;

(b) the manner in which the monies in any provident fund or other fund, referred to in sub-section (2) of section 14 shall be dealt with;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should

not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

32. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

33. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 of the Constitution.

Declara-
tion as to
the policy
of the
State.

Explanation.—In this section, "State" has the same meaning as in article 12 of the Constitution.

THE FIRST SCHEDULE (See sections 4, 7, 8 and 16)

| S. No. | Name of the company | Amount (Rupees in lakhs) |
|--------|-----------------------------------|-----------------------------|
| 1 | The Britannia Engineering Company | 152.85 |
| 2 | Arthur Butler and Company | 137.70 |

THE SECOND SCHEDULE (See sections 19, 20, 21 and 23) ORDER OF PRIORITIES

Category I

(i) Employees' dues on account of arrears of tripartite settlement for the period from the 1st day of January, 1975 to the 31st day of May, 1975.

(ii) Employees' dues on account of unpaid salaries, wages, provident fund, Employees' State Insurance contribution or premium relating to Life Insurance Corporation of India.

Category II

Secured loans from nationalised banks and secured loans from Industrial Reconstruction Corporation of India for the post-take-over management period.

Category III

Central Government loans for the post-take-over management period.

Category IV

Secured loans from nationalised banks and secured loans from financial institutions for the pre-take-over management period.

Category V

Revenue, taxes, cesses, rates or other dues to Central Government, State Government and local authorities or State Electricity Board for the pre-take-over management period.

Category VI

Trade and other creditors for the pre-take-over management period.

STATEMENT OF OBJECTS AND REASONS

Britannia Engineering Company Limited was incorporated in 1917 with its registered office at Calcutta. It owned at Titagarh an engineering unit (where it manufactured road rollers, jute mill machinery and other industrial machinery) and a steel foundry. It also set up in 1960 at Mokameh, a unit to manufacture Railway Wagons, steel structurals, etc. The engineering unit at Titagarh closed down in October 1970 and on the 22nd May, 1976 its management was taken over by the Central Government and entrusted to M/s. Westinghouse Saxby Farmer Limited, Calcutta, a company managed by the Government of West Bengal and in which the West Bengal Government has 87.75 per cent. share-holding. The West Bengal Government has taken complete financial and managerial responsibility for managing the Titagarh unit. The steel foundry is being managed by Industrial Reconstruction Corporation of India. The wagon unit at Mokameh closed down in March 1973. The Central Government took over the management of this unit on the 15th February, 1974 under the Industries (Development and Regulation) Act, 1951 and the unit was re-opened on the 22nd February, 1974.

2. Arthur Butler and Company (Muzaffarpore) Limited was incorporated in 1919 with its registered office at Calcutta and its manufacturing unit at Muzaffarpur. In the past, the company manufactured various types of industrial machinery and when it closed down in February 1972, it was also manufacturing metre-gauge railway wagons. The management of this Company was taken over by the Central Government on the 14th December, 1973 under the Industries (Development and Regulation) Act, 1951 and the unit re-opened on the 10th August, 1974.

3. Britannia Engineering Works, Mokameh, is engaged in the manufacture of Railway Wagons, Under-frames and Steel Structurals and Arthur Butler and Company (Muzaffarpore) Limited in the manufacture of Wagons, Sugar Mills machinery, Structurals, Agricultural implements, Foundry products and Wagon components. The fabrication of wagons, particularly under the old orders from the Railways, has been uneconomical, causing financial loss to the Companies. These losses are being met by the Government by way of grant of loans to the two companies. The companies have been successful in taking up the new lines of production, such as, Coal Tubs, Bridge Girders, Brake Beams, Furnace Structure, Mine Cars and Transmission Tower Lines.

4. After the take over of the management of these two companies, there has been considerable progress in the production performance. It is in the public interest that both the units continue their manufacture of wagons and other goods. These units provide substantial employment and their closure would render a large labour force unemployed. It is not possible to hand over the management of these two units to private management as substantial Government loans have been given to the units. After careful consideration of the whole matter, the Government has decided to acquire these units.

5. The Bill seeks to acquire the Mokameh unit of Britannia Engineering Company Limited and the undertakings owned by Arthur Butler and Company (Muzaffarpore) Limited.

NEW DELHI;

GEORGE FERNANDES.

The 17th July, 1978.

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for payment, in cash and in the manner specified in Chapter VI thereof, an amount equal to the amount specified against the name of each of the companies specified in the First Schedule to the Bill for vesting in the Central Government the right, title and interest of the Mokameh unit of Britannia Engineering Company Limited and Arthur Butler and Company (Muzaffarpore) Limited in relation to the undertakings owned by it. The amount payable will be of the order of Rs. 2,90,55,000.

2. Sub-clause (1) of clause 8 provides for payment, to each of the companies, of further amount in cash, in consideration for the deprivation of the companies of the management of their undertakings, an amount to be calculated at the rate of Rs. 10,000 per annum for the period commencing on the date on which the managements of the undertakings of these companies were taken over by the Central Government and ending on the appointed day (1st April, 1978). It is estimated that this amount will be of the order of Rs. 90,000.

3. Sub-clause (2) of clause 8 provides that in consideration of the retrospective operation of certain provisions of the Bill as specified therein, there shall be given, in cash, to each of the companies, an amount equal to the amount calculated at the rate of Rs. 10,000 per annum for the period commencing on the appointed day and ending on the date on which the Bill receives the assent of the President. This amount is estimated to be of the order of Rs. 10,000.

4. Sub-clause (3) of clause 8 provides for payment of simple interest at the rate of four per cent. per annum, in respect of the amounts payable under clause 7 and sub-clauses (1) and (2) of clause 8, for the period commencing on the appointed day and ending on the date on which the payment of such amounts is made by the Central Government to the Commissioner of Payments. It is estimated that the interest payment in terms of the provisions of sub-clause (3) of clause 8 is likely to be of the order of Rs. 1,00,000 per month.

5. Clause 15 of the Bill provides for appointment of Commissioner of Payments by the Government with adequate staff to assist him for the purpose of disbursing the amounts payable to each of the companies. The salary and allowances of the Commissioner of Payments and his staff and expenditure on office and establishment will be defrayed out of the Consolidated Fund of India. The estimated expenditure on this account is likely to be of the order of Rs. 10,000 per month.

6. Funds will also have to be provided for capital expenditure for modernisation and expansion of the undertakings to make them financially viable. It is estimated that about Rs. 20,00,000 may have to be provided on this account during the current financial year.

7. It has been decided that in so far as the secured loans of Banks and Financial Institutions are concerned the short-fall will be assumed by the Central Government outside the scheme of acquisition. This short-fall is estimated to be of the order of Rs. 33,00,000.

8. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. Such rules may provide for matters, such as—

(a) the time within which, and the manner in which, an intimation referred to in sub-clause (3) of clause 4 of the Bill shall be given, and

(b) the manner in which the monies in any provident fund or other fund referred to in sub-clause (2) of clause 14 shall be dealt with.

The matters in respect of which such rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 114 OF 1978

A Bill to amend the Suppression of Immoral Traffic in Women and Girls Act, 1956.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978.

Short
title
and com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred to as the principal Act), in section 2,—

Amend-
ment of
section 2.

(a) in clause (a), after the word "room", in both the places where it occurs, the word ", conveyance" shall be inserted;

(b) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “corrective institution” means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which women and girls, who are in need of correction, may be detained under this Act, and includes a shelter where female undertrials may be kept in pursuance of this Act;’;

(c) for clause (c), the following clause shall be substituted, namely:—

‘(c) “magistrate” means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule;’;

(d) clause (e) shall be omitted;

(e) for clauses (f) and (g), the following clauses shall be substituted, namely:—

‘(f) “prostitution” means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression “prostitute” shall be construed accordingly;

(g) “protective home” means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which women and girls, who are in need of care and protection, may be kept under this Act, but does not include—

(i) a shelter where female undertrials may be kept in pursuance of this Act, or

(ii) a corrective institution;’.

Insertion
of new
section
2A.

3. After section 2 of the principal Act, the following section shall be inserted, namely:—

Rule of
construc-
tion re-
garding
enact-
ments not
extending
to Jammu
and Kash-
mir.

“2A. Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.”.

Amend-
ment of
section 4.

4. In section 4 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where any person over the age of eighteen years is proved—

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).”.

5. In section 7 of the principal Act,—

Amend-
ment of
section 7.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any woman or girl, who carries on prostitution and the person with whom such prostitution is carried on, in any premises—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months.”;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.”.

Amend-
ment of
section 9.

6. In section 9 of the principal Act, in sub-section (1), for the words “having the custody, charge or care of any woman or girl”, the words “having the custody, charge or care of, or a position of authority over, any woman or girl” shall be substituted.

Substitution of new sections for section 10.

7. For section 10 of the principal Act, the following sections shall be substituted, namely:—

Release on probation of good conduct or after due admonition,

"10. (1) A person convicted for the first time of any offence under section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, be released by the court before which he is convicted, on probation of good conduct,—

(a) in a case arising in an area where the Probation of Offenders Act, 1958, is in force, in the manner provided in section 4 of that Act; and

20 of 1958.

(b) in any other case, in the manner provided in sub-section (1) of section 360 of the Code of Criminal Procedure, 1973.

2 of 1974.

(2) A person convicted for the first time of any offence under section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, also be released after due admonition,—

(a) in a case arising in an area, where the Probation of Offenders Act, 1958, is in force, in the manner provided in section 3 of that Act; and

20 of 1958.

(b) in any other case, in the manner provided in sub-section (3) of section 360 of the Code of Criminal Procedure, 1973.

2 of 1974.

(3) The provisions of sections 5 to 17 (both inclusive) of the Probation of Offenders Act, 1958, shall apply to the cases referred to in clause (a) of sub-section (1) and clause (a) of sub-section (2).

20 of 1958.

(4) The provisions of sub-sections (2) to (10) (both inclusive) of section 360 of the Code of Criminal Procedure, 1973, shall apply to the cases referred to in clause (b) of sub-section (1) and clause (b) of sub-section (2).

2 of 1974.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force, no person convicted of an offence under sub-section (1) or sub-section (2) of section 3, or under section 4, section 5, section 6 or section 9 shall be released on probation or after due admonition.

2 of 1974.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), if the person convicted of an offence under section 7 or section 8 for the first time is a woman or girl, she shall be dealt with under this section and no sentence of imprisonment shall be awarded to her unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with her under this section; and if the court passes any sentence of imprisonment on the offender on first conviction, it shall record its reasons for doing so.

(7) For the purpose of satisfying itself whether or not it would be desirable to deal with such woman or girl under this section, the court shall call for a report from the probation officer appointed under

20 of 1958.

the Probation of Offenders Act, 1958, and shall consider his report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

10A. (1) Where—

(a) a female offender is found guilty of an offence under section 7 or section 8, and is not released under sub-section (1) or sub-section (2) of section 10; and

(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction,

Detention in a corrective institution.

it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit:

Provided that before passing such an order—

(i) the court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the probation officer appointed under the Probation of Offenders Act, 1958; and

20 of 1958.

(ii) the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.

2 of 1974,
36 of 1968.

(2) Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973, relating to appeal, reference and revision, and of the Limitation Act, 1963, as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.

(3) Subject to such rules as may be made in this behalf, the State Government or authority authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution, if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written licence in such form as may be prescribed.

(4) The conditions on which an offender is discharged under sub-section (3), may include requirements relating to residence of the offender and supervision over the offender's activities and movements."

5 of 1988.

2 of 1974.

8. In section 12 of the principal Act, in sub-section (4), for the words and figures "sections 112 to 126 of the Code of Criminal Procedure, 1898", the words and figures "sections 111 to 123 of the Code of Criminal Procedure, 1973" shall be substituted.

Amendment of section 12.

**Amend-
ment of
section 13.**

9. In section 13 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred on—

(a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an Inspector;

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.”

**Amend-
ment of
section 14.**

10. In section 14 of the principal Act,—

(a) in the opening paragraph, for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted;

(b) in clause (iii) of the proviso, for the word “inspector”, the word “sub-inspector” shall be substituted.

2 of 1898.
2 of 1974.

**Amend-
ment of
section 15.**

11. In section 15 of the principal Act,—

(a) in sub-section (2), the following proviso shall be inserted at the end, namely:—

“Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.”;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The special police officer entering any premises under sub-section (1) shall be entitled to remove therefrom—

(a) any woman, if in his opinion, she is carrying on, or is being made to carry on, or attempts are being made to make her carry on, prostitution; or

(b) any girl, if in his opinion, she is under the age of twenty-one years and is carrying on, or is being made to carry on, or attempts are being made to make her carry on, prostitution.”;

(c) in sub-section (5), for the words “the girl”, the words “the woman or girl” shall be substituted;

(d) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code.

2 of 1974.

12. For sections 16 and 17 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 16 and 17.
Rescue of woman or girl.

“16. (1) Where a magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that—

(a) a woman is being made to carry on prostitution in a brothel, or

(b) a girl apparently under the age of twenty-one years is living, or is carrying on, or is being made to carry on, prostitution in a brothel,

he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such woman or girl and produce her before him.

(2) The police officer, after removing the woman or girl, shall forthwith produce her before the magistrate issuing the order.

17. (1) When the special police officer removing a woman or girl under sub-section (4) of section 15 or a police officer rescuing a woman or girl under sub-section (1) of section 16, is for any reason unable to produce her before the appropriate magistrate as required by sub-section (5) of section 15, or before the magistrate issuing the order under sub-section (2) of section 16, he shall forthwith produce her before the nearest magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order:

Intermediate custody of women and girls removed under section 15 or rescued under section 16.

Provided that no woman or girl shall be—

(i) detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or

(ii) restored to or placed in the custody of a person who may exercise a harmful influence over her.

(2) When the woman or girl is produced before the appropriate magistrate under sub-section (5) of section 15 or the magistrate under sub-section (2) of section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of section 16, the age, character and antecedents of the woman or girl and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the woman or girl and the prospects of her rehabilitation.

(3) The magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the

safe custody of the woman or girl:

Provided that no woman or girl shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and no woman or girl shall be kept in the custody of a person likely to have a harmful influence over her.

(4) Where the magistrate is satisfied, after making an inquiry as required under sub-section (2),—

(a) that the information received is correct; and

(b) that she is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such woman or girl be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the woman or girl, and that those entrusted with the custody of the woman or girl, including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the woman or girl as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in women and girls.

(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.”

Amend-
ment of
section 18.

13. In section 18 of the principal Act, in sub-section (1), for the words “two hundred yards”, the words “two hundred metres” shall be substituted.

Substitu-
tion of
new
section for
section 19.

14. For section 19 of the principal Act, the following section shall be substituted, namely:—

Applica-
tion for
being
kept
in a pro-
tective
home
or provid-
ed care
and protec-
tion by
court.

“19. (1) A woman or girl who is carrying on, or is being made to carry on, prostitution, may make an application, to the magistrate within the local limits of whose jurisdiction she is carrying on, or is being made to carry on, prostitution, for an order that she may be—

(a) kept in a protective home, or

(b) provided care and protection by the court in the manner specified in sub-section (3).

(2) The magistrate may, pending inquiry under sub-section (3), direct that the woman or girl be kept in such custody as he may consider proper, having regard to the circumstances of the case.

(3) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a probation officer appointed under the Probation of Offenders Act, 1958, into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept,—

20 of 1958.

(i) in a protective home, or

(ii) in a corrective institution, or

(iii) under the supervision of a person appointed by the magistrate,

for such period as may be specified in the order.”.

15. In section 21 of the principal Act,—

Amend-
ment
of sec-
tion 21.

(a) in sub-section (1), for the words “as many protective homes under this Act as it thinks fit and such homes”, the words “as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions” shall be substituted;

(b) in sub-sections (2), (7), (8) and (10), for the words “protective home”, wherever they occur, the words “protective home or corrective institution” shall be substituted;

(c) in sub-section (3),—

(i) in the opening paragraph and in the first proviso, for the words “protective home”, the words “protective home or corrective institution” shall be substituted;

(ii) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that a person or authority maintaining any corrective institution at the commencement of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978, shall be allowed a period of six months from such commencement to make an application for such licence.”;

(d) after sub-section (9), the following sub-section shall be inserted, namely:—

“(9A) The State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in

this behalf, transfer an inmate of a protective home to another protective home or to a corrective institution or an inmate of a corrective institution to another corrective institution or to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case:

Provided that—

(a) no woman or girl who is transferred under this sub-section shall be required to stay in the home or institution to which she is transferred for a period longer than she was required to stay in the home or institution from which she was transferred;

(b) reasons shall be recorded for every order of transfer under this sub-section.”.

Amend-
ment of
section 22.

16. In section 22 of the principal Act, for the words, brackets, letter and figure “a magistrate as defined in clause (c) of section 2”, the words “a Metropolitan Magistrate or a Judicial Magistrate of the first class” shall be substituted.

Insertion
of new
sections
22A
and 22B.

17. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Power to
establish
Special
Courts.

22A. (1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or, as the case may be, Metropolitan Magistrates, in such district or metropolitan area.

(2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.

(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.

(4) Subject to the foregoing provisions of this section, a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or, as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure, 1973 and the provisions of that Code shall apply accordingly in relation to such courts.

2 of 1974.

Explanation.—In this section, “High Court” has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure, 1973.

2 of 1974.

22B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government may, if it considers it necessary so to do, direct that offences under this Act shall be tried in a summary way by a magistrate [including the presiding officer of a court established under sub-section (1) of section 22A] and the provisions of sections 262 to 265 (both inclusive) of the said Code, shall, as far as may be, apply to such trial:

Power of court to try cases summarily.

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness, who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

18. In section 23 of the principal Act, in sub-section (2),—

Amendment of section 23.

(a) in clause (b), after the words, brackets and figures “under sub-section (1) of section 10”, the words “where the women or girls are without a home” shall be inserted;

(b) after clause (b), the following clause shall be inserted, namely:—

“(bb) the discharge of an offender under sub-section (3) of section 10A from a corrective institution and the form of licence to be granted to such offender;”;

(c) for clause (c), the following clause shall be substituted, namely:—

“(c) the detention and keeping in protective homes or, as the case may be, in corrective institutions of women and girls under this Act and their maintenance;”;

(d) for clause (g), the following clause shall be substituted, namely:—

“(g)(i) the establishment, maintenance, management and superintendence of protective homes and corrective institutions under section 21 and the appointment, powers and duties of persons employed in such homes or institutions;

(ii) the form in which an application for a licence may be made and the particulars to be contained in such application;

(iii) the procedure for the issue or renewal of a licence, the time within which such licence shall be issued or renewed and the procedure to be followed in making a full and complete investigation in respect of an application for a licence;

(iv) the form of a licence and the conditions to be specified therein;

(v) the manner in which the accounts of a protective home and a corrective institution shall be maintained and audited;

(vi) the maintenance of registers and statements by a licensee and the form of such registers and statements;

(vii) the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes and corrective institutions;

(viii) the visits to and communication with such inmates;

(ix) the temporary detention of women and girls sentenced to detention in protective homes or in corrective institutions until arrangements are made for sending them to such homes or institutions;

(x) the transfer of an inmate from—

(a) one protective home to another, or to a corrective institution,

(b) one corrective institution to another or to a protective home,

under sub-section (9A) of section 21;

(xi) the transfer in pursuance of an order of the court from a protective home or a corrective institution to a prison of a woman or girl found to be incorrigible or exercising bad influence upon other inmates of the protective home or the corrective institution and the period of her detention in such prison;

(xii) the transfer to a protective home or corrective institution of women or girls sentenced under section 7 or section 8 and the period of their detention in such home or institution;

(xiii) the discharge of inmates from a protective home or corrective institution either absolutely or subject to conditions, and their arrest in the event of breach of such conditions;

(xiv) the grant of permission to inmates to absent themselves for short periods;

(xv) the inspection of protective homes and corrective institutions and other institutions in which women and girls may be kept, detained and maintained;”

19. In the principal Act, the following Schedule shall be inserted at the end, namely:—

Insertion
of new
Schedule.

"THE SCHEDULE

[See section 2 (c)]

| Section | Magistrate competent to exercise the powers |
|---------|---|
| 7(1) | District Magistrate. |
| 11(4) | Metropolitan Magistrate or Judicial Magistrate of the first class. |
| 12(4) | Metropolitan Magistrate or Judicial Magistrate of the first class. |
| 15(5) | Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate. |
| 16 | Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate. |
| 18 | District Magistrate or Sub-Divisional Magistrate. |
| 19 | Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate. |
| 20 | District Magistrate, Sub-Divisional Magistrate or any Executive Magistrate specially empowered by the State Government. |
| 22B | Metropolitan Magistrate or Judicial Magistrate of the first class. |

20. In section 18 of the Probation of Offenders Act, 1958, the words and figures "or the Suppression of Immoral Traffic in Women and Girls 104 of 1958. Act, 1956" shall be omitted.

Amend-
ment of
Act
20 of
1958,

STATEMENT OF OBJECTS AND REASONS

The Suppression of Immoral Traffic in Women and Girls Act, 1956, was enacted in pursuance of an International Convention signed at New York on 9th May, 1950. The Act came into force on 1st May, 1958. Its principal object is to prevent commercialisation of the vice and trafficking among women and girls. Experience gained in the implementation of the Act has brought to light certain inadequacies. It is proposed to amend the Act to make good these inadequacies. While formulating the amendments, the recommendations made by an Expert Committee appointed by the Department of Social Welfare, the Law Commission as contained in its Sixty-fourth Report and the Committee on the Status of Women in India were also considered. The main amendments proposed are as follows:—

(i) It is proposed to empower the State Governments to declare certain areas, in the public interest, to be places where prostitution will be prohibited. While notifying such areas, due regard will be had to the kinds of persons frequenting such areas, the nature and density of population in those areas and other relevant considerations.

(ii) In order to have adequate man-power to deal with offences under the Act, it is proposed that the special police officers to be appointed under section 13 of the Act shall not be below the rank of an Inspector of Police. The existing provision provides for the appointment of police officers not below the rank of an Assistant Commissioner, a Superintendent of Police or Deputy Superintendent of Police as special police officers. An enabling provision is being made to empower the District Magistrates to appoint retired police or military officers as special police officers with a view to mobilising additional man-power resources available in the community.

(iii) In view of the practical difficulties in obtaining necessary co-operation from respectable local women, the provision requiring the presence of a woman witness of the locality during a search, is proposed to be modified to provide that the woman witness need not necessarily be of the locality in which the place to be searched is situated.

(iv) Under section 10 of the Act, the provisions of section 562 of the Code of Criminal Procedure, 1898, relating to probation and admonition are applicable to persons convicted of certain offences under the Act. The Probation of Offenders Act, 1958, which was enacted subsequently, expressly provides that nothing in that Act shall affect the provisions of the 1956 Act. As such, section 562 of Code of Criminal Procedure, 1898, (corresponding provision of the 1973 Code) continues to apply to offences under the 1956 Act. It is proposed to provide that in areas where the Probation of Offenders

Act is in force, that Act will apply to the offences under sections 7 and 8 of the 1956 Act and where it is not in force, the provisions of the Code of Criminal Procedure would be applicable. But in the State of Jammu and Kashmir, where both the Probation of Offenders Act, 1958, and the Code of Criminal Procedure, 1973, are not applicable, it is proposed to provide for the application of the corresponding law in force in that State.

(v) The Act does not contain any provision for summary trial of cases apprehended under the Act, as a result of which the disposal of cases often takes a long time. This lacuna leaves enough scope for unscrupulous elements involved in the profession of commercialised prostitution to manipulate material for delaying cases in Court to their advantage and defeating the purpose of the Act. It is, therefore, proposed to add an enabling provision to provide for summary trial of cases under the Act. The proposed provision will not, however, preclude the magistrate from adopting a regular procedure if it is considered necessary to do so in the interests of justice.

(vi) It is proposed to include an enabling provision for the setting up of Special Courts to deal with all or any of the offences under the Act.

2. The other amendments proposed are minor and consequential in nature.

P. C. CHUNDER.

NEW DELHI;

The 27th April, 1978.

FINANCIAL MEMORANDUM

Clause 17 of the Bill which proposes to insert a new section 22A in the Suppression of Immoral Traffic in Women and Girls Act, 1956, empowers the State Governments, after consultation with the High Courts concerned, to establish one or more Courts of Judicial Magistrates of the First-Class, or, as the case may be, of Metropolitan Magistrates for the speedy trial of offences under the Act in any district or metropolitan area. Expenditure in respect of Special Courts if and when established for the Union territories will be met from out of the Consolidated Fund of India. This expenditure will be of a recurring nature only and is not likely to exceed Rs. 35,000 annually.

2. The provisions of the Bill do not involve any expenditure of a non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill seeks to amend section 23 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 so as to empower the Central Government to make rules to provide for the matters now being included in the Act. These matters relate, among other things, to the discharge of an offender under sub-section (3) of new section 10A from a corrective institution and the form of licence to be granted to such offender and to provisions for the establishment, maintenance, management and superintendence of corrective institutions and the detention and keeping in such corrective institutions of persons committing certain offences under the Act. The matters in relation to which rules may be made under this section are matters of detail or procedure and as such the delegation of legislative power is of a normal character.

AVTAR SINGH RIKHY,
Secretary.

